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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,968	12/31/2001	Niels Peter Emme	1149.41056X00	5435
20457	7590	03/03/2006	EXAMINER	
ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873			LAM, HUNG H	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/029,968	Applicant(s) EMME, NIELS PETER	
	Examiner Hung H. Lam	Art Unit 2615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 19-39 and 34-40. 19-40
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

1. The Applicants argue that Uchino does not teach/suggest the claimed transceiver. The Examiner respectfully disagrees. By definition, any device that can transmit and receive is a transceiver. The Examiner has relied upon Uchino's emitting portion 32 and 25 for emitting/illuminating infrared light to an object (Uchino: Col. 3, Ln. 22-48) and Uchino's CCD 41 for not only capturing but also receiving infrared images (Uchino: Fig. 6; Col. 3, Ln. 22-48; Col. 4, Ln. 15-61). Further more, the Examiner has relied upon Wakui's IRED 17 for data transmission (Wakui: Col. 3, Ln. 48 - Ln. 51; Col. 5, Ln. 51- Col. 6, Ln. 18).
2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the claimed invention recites a camera and transceiver as separated elements of the mobile communication terminal) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
3. With regarding independent claim 29, the Applicants argue that Wakui does not teach or suggest a transceiver that both illuminates an angle of view of a camera and provides a wireless connection. The Examiner respectfully agrees. The Examiner has never alleged that the transceiver in Wakui illuminates an angle of view of a camera. Instead, the Examiner has relied upon Uchino's digital camera to emit infrared beam toward the substantially complete object area and acquire infrared image (Uchino: Col. 3, Ln. 22-48). Further more, the Examiner relies on Wakui to teach an infrared transceiver, which wirelessly transmits data to an external device (Wakui: Fig. 1; computer 200; Col. 3, Ln. 48 - Col. 4, Ln. 51; Col. 5, Ln. 51- Col. 6, Ln. 18).
4. The Applicants argue that the combination of Uchino and Wakui does not teach or suggest the transceiver, and that one skill in the art would not be motivated to further modify the combination of Uchino and Wakui to supply both the illumination and communications functions from the same transceiver. The Examiner respectfully disagrees. The Examiner has relied upon Uchino's digital camera to emit infrared beam toward the substantially complete object area and acquire infrared image (Uchino: Col. 3, Ln. 22-48). Further more, Uchino as modified by Wakui teaches an infrared transceiver which wirelessly transmits data to an external device (Wakui: Fig. 1; computer 200; Col. 3, Ln. 48 - Col. 4, Ln. 51; Col. 5, Ln. 51- Col. 6, Ln. 18).
5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).
6. With regarding dependent claim 33, the Applicants argue that the combination of Uchino, Wakui and Bittner fails to teach or suggest a handle including a third position. The Examiner respectfully disagrees. Uchino and Wakui as modified by Bittner teaches a first (Bitter: Fig. 2 wherein lens-cover is in closed position) and second handle position (Bitter: Fig. 3 wherein lens-cover is in open position). In addition, Uchino teaches an infrared filter which can be removed or inserted to capture infrared images or images with visible light (Uchino: Col. 5, Ln. 3-25). Therefore, when Bitter lens-cover is in the open position, the infrared filter in Uchino may be in the insertion or removal mode and thereby the combination of Uchino, Wakui and Bitter provided the third position associated with the removal or insertion of the infrared filter in Uchino.

In view of the above, the Examiner believes that the broadest interpretation of the present claimed invention does in fact read on the cited reference for at least the reasons discussed above and as stated in the detail Office Action, *mailed 10/31/05*.


NGOC-YEN YU
PRIMARY EXAMINER